

**AMENDMENTS TO HEALTH INSURANCE
COVERAGE IN STATE CONTRACTS**

2010 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill amends provisions related to the requirement that contractors with certain state entities must provide qualified health insurance to their employees and the dependents of the employees who work or reside in the state.

Highlighted Provisions:

This bill:

- ▶ clarifies the application of a waiting period for health insurance may not exceed the first of the month following 90 days of the date of hire;
- ▶ clarifies that the qualified health insurance coverage must be offered to employees and dependents who work or reside in the state;
- ▶ clarifies that the qualified health insurance coverage that must be offered is a minimum standard and an employer may offer greater coverage;
- ▶ amends the definition of qualified health insurance coverage to clarify the standards; and
- ▶ amends the enforcement provisions to provide protections for good faith compliance.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17B-2a-818.5, as enacted by Laws of Utah 2009, Chapter 13

19-1-206, as enacted by Laws of Utah 2009, Chapter 13

63A-5-205, as last amended by Laws of Utah 2009, Chapter 13

32 **63C-9-403**, as enacted by Laws of Utah 2009, Chapter 13

33 **72-6-107.5**, as enacted by Laws of Utah 2009, Chapter 13

34 **79-2-404**, as enacted by Laws of Utah 2009, Chapter 13

35

36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **17B-2a-818.5** is amended to read:

38 **17B-2a-818.5. Contracting powers of public transit districts -- Health insurance**
39 **coverage.**

40 (1) For purposes of this section:

41 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
42 34A-2-104 who:

43 (i) works at least 30 hours per calendar week; and

44 (ii) meets employer eligibility waiting requirements for health care insurance which
45 may not exceed the first day of the calendar month following 90 days from the date of hire.

46 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

47 (c) "Qualified health insurance coverage" means [~~a health benefit plan that~~] at the time
48 the contract is entered into or renewed:

49 (i) [~~(A) provides coverage that is actuarially equivalent to the current benefit plan~~] a
50 health benefit plan and employer contribution level that provides coverage with an aggregate
51 actuarial value at least actuarially equivalent to the plan that is offered by a health maintenance
52 organization that has the largest insured commercial, non-Medicaid, enrollment of covered
53 lives in the state, as determined by the Children's Health Insurance Program under [Section
54 26-40-106; and] Subsection 26-40-106(2)(a), in which:

55 [~~(B) under which~~] (A) the employer pays at least 50% of the premium for the
56 employee and the dependents of the employee[;] who reside or work in the state; and

57 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

58 (I) rather than the deductible and out of pocket maximum based on income levels, the
59 deductible is \$750 and the out of pocket maximum is \$2,000;

60 (II) dental coverage is not required; and

61 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
62 apply; or

(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has:

(I) a deductible that is either:

[(F)] (Aa) the lowest deductible permitted for a federally qualified high deductible health plan; [and] or

(Bb) a deductible that is higher than the lowest deductible permitted for a federally qualified high deductible health plan, but includes an employer contribution to a health savings account in a dollar amount at least equal to the dollar amount difference between the lowest deductible permitted for a federally qualified high deductible plan and the deductible for the employer offered federally qualified high deductible plan; and

(II) an out of pocket maximum that does not exceed three times the amount of the annual deductible; and

(B) under which the employer pays 75% of the premium for the employee and the dependents of the employee[; or] who work or reside in the state.

[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan determined under Subsection (1)(c)(i); and]

[(B) under which the employer pays at least 75% of the premium of the employee and the dependents of the employee.]

(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

(2) Except as provided in Subsection (3), this section applies to all contracts entered into by the public transit district on or after July 1, 2009, if:

(a) the contract is for design or construction; and

(b) (i) the prime contract is in the amount of \$1,500,000 or greater; or

(ii) a subcontract is in the amount of \$750,000 or greater.

(3) This section does not apply if:

(a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(4) (a) This section does not apply to a change order as defined in Section 63G-6-102, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to

circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit district that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employee's dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor shall demonstrate to the public transit district that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employee's dependents during the duration of the contract.

(c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with ~~[administrative rules]~~ an ordinance adopted by the public transit district under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with ~~[administrative rules]~~ an ordinance adopted by the public transit district under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The public transit district shall adopt ~~[administrative rules]~~ ordinances:

~~[(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;]~~

~~[(b)]~~ (a) in coordination with:

(i) the Department of Environmental Quality in accordance with Section 19-1-206;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403; and

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

~~[(vi) the Legislature's Administrative Rules Review Committee; and]~~

~~[(c)]~~ (b) which establish:

(i) the requirements and procedures a contractor must follow to demonstrate to the public transit district compliance with this section which shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or (b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either the Utah Insurance Department or an actuary selected by the contractor or the contractor's insurer; ~~and~~

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the public transit district upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the public transit district upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for employees and dependents of employees of the contractor or subcontractor who were not offered qualified health insurance coverage during the duration of the contract~~[-]; and~~

(iii) a website on which the district shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(c)(i).

(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs ~~[not covered by insurance:]~~ that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a) if the employer:

(A) relied in good faith on a written statement of actuarial equivalency provided by an actuary; or

(B) if a department or division determines that compliance with this section is not required under the provisions of Subsections (3) or (4).

(b) An employee has a private right of action only against the employee's employer to

156 enforce the provisions of this Subsection (7).

157 (8) Any penalties imposed and collected under this section shall be deposited into the
158 Medicaid Restricted Account created in Section 26-18-402.

159 (9) The failure of a contractor or subcontractor to provide qualified health insurance
160 coverage as required by this section:

161 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
162 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
163 Legal and Contractual Remedies; and

164 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
165 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
166 or construction.

167 Section 2. Section **19-1-206** is amended to read:

168 **19-1-206. Contracting powers of department -- Health insurance coverage.**

169 (1) For purposes of this section:

170 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
171 34A-2-104 who:

172 (i) works at least 30 hours per calendar week; and

173 (ii) meets employer eligibility waiting requirements for health care insurance which
174 may not exceed the first day of the calendar month following 90 days from the date of hire.

175 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

176 (c) "Qualified health insurance coverage" means [~~a health benefit plan that~~] at the time
177 the contract is entered into or renewed:

178 (i) [~~(A) provides coverage that is actuarially equivalent to the current benefit plan~~] a
179 health benefit plan and employer contribution level that provides coverage with an aggregate
180 actuarial value at least actuarially equivalent to the plan that is offered by a health maintenance
181 organization that has the largest insured commercial, non-Medicaid, enrollment of covered
182 lives in the state, as determined by the Children's Health Insurance Program under [~~Section~~
183 ~~26-40-106; and~~] Subsection 26-40-106(2)(a), in which:

184 [~~(B) under which~~] (A) the employer pays at least 50% of the premium for the
185 employee and the dependents of the employee[;] who reside or work in the state; and

186 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

187 (I) rather than the deductible and out of pocket maximum based on income levels, the
188 deductible is \$750 and the out of pocket maximum is \$2,000;

189 (II) dental coverage is not required; and

190 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
191 apply; or

192 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has:

193 (I) a deductible that is either:

194 [(H)] (Aa) the lowest deductible permitted for a federally qualified high deductible
195 health plan; [and] or

196 (Bb) a deductible that is higher than the lowest deductible permitted for a federally
197 qualified high deductible health plan, but includes an employer contribution to a health savings
198 account in a dollar amount at least equal to the dollar amount difference between the lowest
199 deductible permitted for a federally qualified high deductible plan and the deductible for the
200 employer offered federally qualified high deductible plan; and

201 (II) an out of pocket maximum that does not exceed three times the amount of the
202 annual deductible; and

203 (B) under which the employer pays 75% of the premium for the employee and the
204 dependents of the employee~~[-or]~~ who work or reside in the state.

205 ~~[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan~~
206 ~~determined under Subsection (1)(c)(i); and]~~

207 ~~[(B) under which the employer pays at least 75% of the premium of the employee and~~
208 ~~the dependents of the employee.]~~

209 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

210 (2) Except as provided in Subsection (3), this section applies to all contracts entered
211 into by or delegated to the department or a division or board of the department on or after July
212 1, 2009, if:

213 (a) the contract is for design or construction; and

214 (b) (i) the prime contract is in the amount of \$1,500,000 or greater; or

215 (ii) a subcontract is in the amount of \$750,000 or greater.

216 (3) This section does not apply to contracts entered into by the department or a division
217 or board of the department if:

- 218 (a) the application of this section jeopardizes the receipt of federal funds;
219 (b) the contract or agreement is between:
220 (i) the department or a division or board of the department; and
221 (ii) (A) another agency of the state;
222 (B) the federal government;
223 (C) another state;
224 (D) an interstate agency;
225 (E) a political subdivision of this state; or
226 (F) a political subdivision of another state;
227 (c) the executive director determines that applying the requirements of this section to a
228 particular contract interferes with the effective response to an immediate health and safety
229 threat from the environment; or
230 (d) the contract is:
231 (i) a sole source contract; or
232 (ii) an emergency procurement.
- 233 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
234 or a modification to a contract, when the contract does not meet the initial threshold required
235 by Subsection (2).
- 236 (b) A person who intentionally uses change orders or contract modifications to
237 circumvent the requirements of Subsection (2) is guilty of an infraction.
- 238 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
239 director that the contractor has and will maintain an offer of qualified health insurance
240 coverage for the contractor's employees and the employees' dependents during the duration of
241 the contract.
- 242 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
243 demonstrate to the executive director that the subcontractor has and will maintain an offer of
244 qualified health insurance coverage for the subcontractor's employees and the employees'
245 dependents during the duration of the contract.
- 246 (c) (i) (A) A contractor who fails to comply with Subsection (5)(a) during the duration
247 of the contract is subject to penalties in accordance with administrative rules adopted by the
248 department under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) a public transit district in accordance with Section 17B-2a-818.5;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

(vi) the Legislature's Administrative Rules Review Committee; and

(c) which establish:

(i) the requirements and procedures a contractor must follow to demonstrate to the public transit district compliance with this section which shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

(b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either the Utah Insurance Department or an actuary selected by the contractor or the contractor's insurer; ~~and~~

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

(D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract[-]; and

(iii) a website on which the department shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(c)(i).

(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs [~~not covered by insurance.~~] that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a) if the employer:

(A) relied in good faith on a written statement of actuarial equivalency provided by an actuary; or

(B) if the department determines that compliance with this section is not required under the provisions of Subsections (3) or (4).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Section 3. Section **63A-5-205** is amended to read:

63A-5-205. Contracting powers of director -- Retainage -- Health insurance**coverage.**

(1) As used in this section:

(a) "Capital developments" has the same meaning as provided in Section 63A-5-104.

(b) "Capital improvements" has the same meaning as provided in Section 63A-5-104.

(c) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 90 days from the date of hire.

(d) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(e) "Qualified health insurance coverage" means ~~[a health benefit plan that]~~ at the time the contract is entered into or renewed:

(i) ~~[(A) provides coverage that is actuarially equivalent to the current benefit plan]~~ a health benefit plan and employer contribution level that provides coverage with an aggregate actuarial value at least actuarially equivalent to the plan that is offered by a health maintenance organization that has the largest insured commercial, non-Medicaid, enrollment of covered lives in the state, as determined by the Children's Health Insurance Program under [Section 26-40-106, and] Subsection 26-40-106(2)(a) in which:

~~[(B) under which]~~ (A) the employer pays at least 50% of the premium for the employee and the dependents of the employee[;] who work and reside in the state; and

(B) for purposes of calculating actuarial equivalency under this Subsection (1)(e)(i):

(I) rather than the deductible and out of pocket maximum based on income levels, the deductible is \$750 and the out of pocket maximum is \$2,000;

(II) dental coverage is not required; and

(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not apply; or

(ii) (A) is a federally qualified high deductible health plan that, at a minimim, has:

(I) a deductible that is either:

[(H)] (Aa) the lowest deductible permitted for a federally qualified high deductible health plan; [and] or

(Bb) a deductible that is higher than the lowest deductible permitted for a federally qualified high deductible health plan, but includes an employer contribution to a health savings account in a dollar amount at least equal to the dollar amount difference between the lowest deductible permitted for a federally qualified high deductible plan and the deductible for the employer offered federally qualified high deductible plan; and

(II) an out of pocket maximum that does not exceed three times the amount of the annual deductible; and

(B) under which the employer pays 75% of the premium for the employee and the dependents of the employee~~[-or]~~ who work or reside in the state.

~~[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan determined under Subsection (1)(e)(i); and]~~

~~[(B) under which the employer pays at least 75% of the premium of the employee and the dependents of the employee.]~~

(f) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

(2) In accordance with Title 63G, Chapter 6, Utah Procurement Code, the director may:

(a) subject to Subsection (3), enter into contracts for any work or professional services which the division or the State Building Board may do or have done; and

(b) as a condition of any contract for architectural or engineering services, prohibit the architect or engineer from retaining a sales or agent engineer for the necessary design work.

(3) (a) Except as provided in Subsection (3)(b), this Subsection (3) applies to all contracts entered into by the division or the State Building Board on or after July 1, 2009, if:

(i) the contract is for design or construction; and

(ii) (A) the prime contract is in the amount of \$1,500,000 or greater; or

(B) a subcontract is in the amount of \$750,000 or greater.

(b) This Subsection (3) does not apply:

(i) if the application of this Subsection (3) jeopardizes the receipt of federal funds;

(ii) if the contract is a sole source contract;

(iii) if the contract is an emergency procurement; or

(iv) to a change order as defined in Section 63G-6-102, or a modification to a contract, when the contract does not meet the threshold required by Subsection (3)(a).

(c) A person who intentionally uses change orders or contract modifications to

circumvent the requirements of Subsection (3)(a) is guilty of an infraction.

(d) (i) A contractor subject to Subsection (3)(a) shall demonstrate to the director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents.

(ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor shall demonstrate to the director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents.

(e) (i) (A) A contractor who fails to meet the requirements of Subsection (3)(d)(i) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (3)(f).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (3)(d)(ii).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (3)(d)(ii) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (3)(f).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (3)(d)(i).

(f) The division shall adopt administrative rules:

(i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(ii) in coordination with:

(A) the Department of Environmental Quality in accordance with Section 19-1-206;

(B) the Department of Natural Resources in accordance with Section 79-2-404;

(C) a public transit district in accordance with Section 17B-2a-818.5;

(D) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(E) the Department of Transportation in accordance with Section 72-6-107.5; and

(F) the Legislature's Administrative Rules Review Committee; and

(iii) which establish:

(A) the requirements and procedures a contractor must follow to demonstrate to the director compliance with this Subsection (3) which shall include:

(I) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

(b) more than twice in any 12-month period; and

(II) that the actuarially equivalent determination required in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either the Utah Insurance Department or an actuary selected by the contractor or the contractor's insurer; ~~and~~

(B) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this Subsection (3), which may include:

(I) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(II) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(III) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

(IV) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract~~[-]; and~~

(C) a website on which the department shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(e)(i).

(g) (i) In addition to the penalties imposed under Subsection (3)(f)(iii), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs ~~[not covered by insurance.]~~ that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (g)(i) if the employer:

(A) relied in good faith on a written statement of actuarial equivalency provided by an actuary; or

(B) if the department determines that compliance with this section is not required under the provisions of Subsection (3)(b).

~~[(ii)]~~ (iii) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (3)(g).

(h) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created by Section 26-18-402.

(i) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(i) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies; and

(ii) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

(4) The judgment of the director as to the responsibility and qualifications of a bidder is conclusive, except in case of fraud or bad faith.

(5) The division shall make all payments to the contractor for completed work in accordance with the contract and pay the interest specified in the contract on any payments that are late.

(6) If any payment on a contract with a private contractor to do work for the division or the State Building Board is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

Section 4. Section **63C-9-403** is amended to read:

63C-9-403. Contracting power of executive director -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section 34A-2-104 who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance which may not exceed the first of the calendar month following 90 days from the date of hire.

(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(c) "Qualified health insurance coverage" means ~~[a health benefit plan that]~~ at the time the contract is entered into or renewed:

(i) ~~[(A) provides coverage that is actuarially equivalent to the current benefit plan]~~ a health benefit plan and employer contribution level that provides coverage with an aggregate

466 actuarial value at least actuarially equivalent to the plan that is offered by a health maintenance
467 organization that has the largest insured commercial, non-Medicaid, enrollment of covered
468 lives in the state, as determined by the Children's Health Insurance Program under [Section
469 26-40-106; and] Subsection 26-40-106(2)(a), in which:

470 ~~[(B) under which]~~ (A) the employer pays at least 50% of the premium for the
471 employee and the dependents of the employee[;] who work or reside in the state; and

472 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

473 (I) rather than the deductible and out of pocket maximum based on income levels, the
474 deductible is \$750 and the out of pocket maximum is \$2,000;

475 (II) dental coverage is not required; and

476 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
477 apply; or

478 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has:

479 (I) a deductible that is either:

480 ~~[(Aa)]~~ (Aa) the lowest deductible permitted for a federally qualified high deductible
481 health plan; ~~[and]~~ or

482 (Bb) a deductible that is higher than the lowest deductible permitted for a federally
483 qualified high deductible health plan, but includes an employer contribution to a health savings
484 account in a dollar amount at least equal to the dollar amount difference between the lowest
485 deductible permitted for a federally qualified high deductible plan and the deductible for the
486 employer offered federally qualified high deductible plan; and

487 (II) an out of pocket maximum that does not exceed three times the amount of the
488 annual deductible; and

489 (B) under which the employer pays 75% of the premium for the employee and the
490 dependents of the employee[; ~~or~~] who work or reside in the state.

491 ~~[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan~~
492 ~~determined under Subsection (1)(c)(i); and]~~

493 ~~[(B) under which the employer pays at least 75% of the premium of the employee and~~
494 ~~the dependents of the employee.]~~

495 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

496 (2) Except as provided in Subsection (3), this section applies to all contracts entered

into by the board or on behalf of the board on or after July 1, 2009, if:

(a) the contract is for design or construction; and

(b) (i) the prime contract is in the amount of \$1,500,000 or greater; or

(ii) a subcontract is in the amount of \$750,000 or greater.

(3) This section does not apply if:

(a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(4) (a) This section does not apply to a change order as defined in Section 63G-6-102, or a modification to a contract, when the contract does not meet the initial threshold required by Subsection (2).

(b) A person who intentionally uses change orders or contract modifications to circumvent the requirements of Subsection (2) is guilty of an infraction.

(5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.

(b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor shall demonstrate to the executive director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the contract.

(c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (6).

(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).

(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) the Department of Environmental Quality in accordance with Section 19-1-206;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) a public transit district in accordance with Section 17B-2a-818.5;

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

(vi) the Legislature's Administrative Rules Review Committee; and

(c) which establish:

(i) the requirements and procedures a contractor must follow to demonstrate to the executive director compliance with this section which shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

(b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either the Utah Insurance Department or an actuary selected by the contractor or the contractor's insurer; ~~and~~

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for employees and dependents of employees of the contractor or subcontractor who were not offered qualified health insurance coverage during the duration of the contract~~[-]; and~~

(iii) a website on which the department shall post the benchmark for the qualified

559 health insurance coverage identified in Subsection (1)(c)(i).

560 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
561 subcontractor who intentionally violates the provisions of this section shall be liable to the
562 employee for health care costs [~~not covered by insurance;~~] that would have been covered by
563 qualified health insurance coverage.

564 (ii) An employer has an affirmative defense to a cause of action under Subsection
565 (7)(a) if the employer:

566 (A) relied in good faith on a written statement of actuarial equivalency provided by an
567 actuary; or

568 (B) if the department determines that compliance with this section is not required under
569 the provisions of Subsections (3) or (4).

570 (b) An employee has a private right of action only against the employee's employer to
571 enforce the provisions of this Subsection (7).

572 (8) Any penalties imposed and collected under this section shall be deposited into the
573 Medicaid Restricted Account created in Section 26-18-402.

574 (9) The failure of a contractor or subcontractor to provide qualified health insurance
575 coverage as required by this section:

576 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
577 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
578 Legal and Contractual Remedies; and

579 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
580 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
581 or construction.

582 Section 5. Section **72-6-107.5** is amended to read:

583 **72-6-107.5. Construction of improvements of highway -- Contracts -- Health**
584 **insurance coverage.**

585 (1) For purposes of this section:

586 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
587 34A-2-104 who:

588 (i) works at least 30 hours per calendar week; and

589 (ii) meets employer eligibility waiting requirements for health care insurance which

may not exceed the first day of the calendar month following 90 days from the date of hire.

(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

(c) "Qualified health insurance coverage" means ~~[a health benefit plan that]~~ at the time the contract is entered into or renewed:

(i) ~~[(A) provides coverage that is actuarially equivalent to the current benefit plan]~~ a health benefit plan and employer contribution level that provides coverage with an aggregate actuarial value at least actuarially equivalent to the plan that is offered by a health maintenance organization that has the largest insured commercial, non-Medicaid, enrollment of covered lives in the state, as determined by the Children's Health Insurance Program under [Section 26-40-106; and] Subsection 26-40-106(2)(a), in which:

~~[(B) under which]~~ (A) the employer pays at least 50% of the premium for the employee and the dependents of the employee[;] who work or reside in the state; and

(B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

(I) rather than the deductible and out of pocket maximum based on income levels, the deductible is \$750 and the out of pocket maximum is \$2,000;

(II) dental coverage is not required; and

(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not apply; or

(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has:

(I) a deductible that is either:

~~[(H) (Aa)]~~ (Aa) the lowest deductible permitted for a federally qualified high deductible health plan; [and] or

(Bb) a deductible that is higher than the lowest deductible permitted for a federally qualified high deductible health plan, but includes an employer contribution to a health savings account in a dollar amount at least equal to the dollar amount difference between the lowest deductible permitted for a federally qualified high deductible plan and the deductible for the employer offered federally qualified high deductible plan; and

(II) an out of pocket maximum that does not exceed three times the amount of the annual deductible; and

(B) under which the employer pays 75% of the premium for the employee and the dependents of the employee[; or] who reside or work in the state.

621 ~~[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan~~
622 ~~determined under Subsection (1)(c)(i); and]~~

623 ~~[(B) under which the employer pays at least 75% of the premium of the employee and~~
624 ~~the dependents of the employee.]~~

625 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

626 (2) Except as provided in Subsection (3), this section applies to all contracts entered
627 into by the department on or after July 1, 2009, for construction or design of highways if:

628 (a) the prime contract is in the amount of \$1,500,000 or greater; or

629 (b) a subcontract is in the amount of \$750,000 or greater.

630 (3) This section does not apply if:

631 (a) the application of this section jeopardizes the receipt of federal funds;

632 (b) the contract is a sole source contract; or

633 (c) the contract is an emergency procurement.

634 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
635 or a modification to a contract, when the contract does not meet the initial threshold required
636 by Subsection (2).

637 (b) A person who intentionally uses change orders or contract modifications to
638 circumvent the requirements of Subsection (2) is guilty of an infraction.

639 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the department that
640 the contractor has and will maintain an offer of qualified health insurance coverage for the
641 contractor's employees and the employees' dependents during the duration of the contract.

642 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
643 demonstrate to the department that the subcontractor has and will maintain an offer of qualified
644 health insurance coverage for the subcontractor's employees and the employees' dependents
645 during the duration of the contract.

646 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
647 the duration of the contract is subject to penalties in accordance with administrative rules
648 adopted by the department under Subsection (6).

649 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
650 requirements of Subsection (5)(b).

651 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during

the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) the Department of Environmental Quality in accordance with Section 19-1-206;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) the State Building Board in accordance with Section 63A-5-205;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(v) a public transit district in accordance with Section 17B-2a-818.5; and

(vi) the Legislature's Administrative Rules Review Committee; and

(c) which establish:

(i) the requirements and procedures a contractor must follow to demonstrate to the department compliance with this section which shall include:

(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or (b) more than twice in any 12-month period; and

(B) that the actuarially equivalent determination required in Subsection (1) is met by the contractor if the contractor provides the department or division with a written statement of actuarial equivalency from either the Utah Insurance Department or an actuary selected by the contractor or the contractor's insurer; ~~and~~

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

(D) monetary penalties which may not exceed 50% of the amount necessary to

purchase qualified health insurance coverage for an employee and a dependent of the employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract[-]; and

(iii) a website on which th department shall post the benchmark for the qualified health insurance coverage identified in Subsection (1)(c)(i).

(7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or subcontractor who intentionally violates the provisions of this section shall be liable to the employee for health care costs [~~not covered by insurance.~~] that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a) if the employer:

(A) relied in good faith on a written statement of actuarial equivalency provided by an actuary; or

(B) if the department determines that compliance with this section is not required under the provisions of Subsections (3) or (4).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section 26-18-402.

(9) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

Section 6. Section **79-2-404** is amended to read:

79-2-404. Contracting powers of department -- Health insurance coverage.

(1) For purposes of this section:

(a) "Employee" means an "employee," "worker," or "operative" as defined in Section

714 34A-2-104 who:

715 (i) works at least 30 hours per calendar week; and

716 (ii) meets employer eligibility waiting requirements for health care insurance which
717 may not exceed the first day of the calendar month following 90 days from the date of hire.

718 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

719 (c) "Qualified health insurance coverage" means a ~~[health benefit plan that]~~ at the time
720 the contract is entered into or renewed:

721 (i) ~~[(A) provides coverage that is actuarially equivalent to the current benefit plan]~~ a
722 health benefit plan and employer contribution level that provides coverage with an aggregate
723 actuarial value at least actuarially equivalent to the plan that is offered by a health maintenance
724 organization that has the largest insured commercial, non-Medicaid, enrollment of covered
725 lives in the state, as determined by the Children's Health Insurance Program under [Section
726 26-40-106, and] Subsection 26-40-106(2)(a) in which:

727 ~~[(B) under which]~~ (A) the employer pays at least 50% of the premium for the
728 employee and the dependents of the employee[;] who reside or work in the state; and

729 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

730 (I) rather than the deductible and out of pocket maximum based on income levels, the
731 deductible is \$750 and the out of pocket maximum is \$2,000;

732 (II) dental coverage is not required; and

733 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
734 apply; or

735 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has:

736 (I) a deductible that is either:

737 ~~[(Aa)]~~ (Aa) the lowest deductible permitted for a federally qualified high deductible
738 health plan; ~~[and]~~ or

739 (Bb) a deductible that is higher than the lowest deductible permitted for a federally
740 qualified high deductible health plan, but includes an employer contribution to a health savings
741 account in a dollar amount at least equal to the dollar amount difference between the lowest
742 deductible permitted for a federally qualified high deductible plan and the deductible for the
743 employer offered federally qualified high deductible plan; and

744 (II) an out of pocket maximum that does not exceed three times the amount of the

745 annual deductible; and

746 (B) under which the employer pays 75% of the premium for the employee and the
747 dependents of the employee~~[-or]~~ who work or reside in the state.

748 ~~[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
749 determined under Subsection (1)(c)(i); and]~~

750 ~~[(B) under which the employer pays at least 75% of the premium of the employee and
751 the dependents of the employee.]~~

752 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

753 (2) Except as provided in Subsection (3), this section applies to all contracts entered
754 into by, or delegated to, the department or a division, board, or council of the department on or
755 after July 1, 2009, if:

756 (a) the contract is for design or construction; and

757 (b) (i) the prime contract is in the amount of \$1,500,000 or greater; or

758 (ii) a subcontract is in the amount of \$750,000 or greater.

759 (3) This section does not apply to contracts entered into by the department or a
760 division, board, or council of the department if:

761 (a) the application of this section jeopardizes the receipt of federal funds;

762 (b) the contract or agreement is between:

763 (i) the department or a division, board, or council of the department; and

764 (ii) (A) another agency of the state;

765 (B) the federal government;

766 (C) another state;

767 (D) an interstate agency;

768 (E) a political subdivision of this state; or

769 (F) a political subdivision of another state; or

770 (c) the contract or agreement is:

771 (i) for the purpose of disbursing grants or loans authorized by statute;

772 (ii) a sole source contract; or

773 (iii) an emergency procurement.

774 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
775 or a modification to a contract, when the contract does not meet the initial threshold required

776 by Subsection (2).

777 (b) A person who intentionally uses change orders or contract modifications to
778 circumvent the requirements of Subsection (2) is guilty of an infraction.

779 (5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department
780 that the contractor has and will maintain an offer of qualified health insurance coverage for the
781 contractor's employees and the employees' dependents during the duration of the contract.

782 (b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the contractor
783 shall demonstrate to the department that the subcontractor has and will maintain an offer of
784 qualified health insurance coverage for the subcontractor's employees and the employees'
785 dependents during the duration of the contract.

786 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
787 the duration of the contract is subject to penalties in accordance with administrative rules
788 adopted by the department under Subsection (6).

789 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
790 requirements of Subsection (5)(b).

791 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
792 the duration of the contract is subject to penalties in accordance with administrative rules
793 adopted by the department under Subsection (6).

794 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
795 requirements of Subsection (5)(a).

796 (6) The department shall adopt administrative rules:

797 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

798 (b) in coordination with:

799 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

800 (ii) a public transit district in accordance with Section 17B-2a-818.5;

801 (iii) the State Building Board in accordance with Section 63A-5-205;

802 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

803 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

804 (vi) the Legislature's Administrative Rules Review Committee; and

805 (c) which establish:

806 (i) the requirements and procedures a contractor must follow to demonstrate

807 compliance with this section to the department which shall include:

808 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
809 (b) more than twice in any 12-month period; and

810 (B) that the actuarially equivalent determination required in Subsection (1) is met by
811 the contractor if the contractor provides the department or division with a written statement of
812 actuarial equivalency from either the Utah Insurance Department or an actuary selected by the
813 contractor or the contractor's insurer; and

814 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
815 violates the provisions of this section, which may include:

816 (A) a three-month suspension of the contractor or subcontractor from entering into
817 future contracts with the state upon the first violation;

818 (B) a six-month suspension of the contractor or subcontractor from entering into future
819 contracts with the state upon the second violation;

820 (C) an action for debarment of the contractor or subcontractor in accordance with
821 Section 63G-6-804 upon the third or subsequent violation; ~~[and]~~

822 (D) monetary penalties which may not exceed 50% of the amount necessary to
823 purchase qualified health insurance coverage for an employee and a dependent of an employee
824 of the contractor or subcontractor who was not offered qualified health insurance coverage
825 during the duration of the contract[-]; and

826 (iii) a website on which the department shall post the benchmark for the qualified
827 health insurance coverage identified in Subsection (1)(c)(i).

828 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or
829 subcontractor who intentionally violates the provisions of this section shall be liable to the
830 employee for health care costs ~~[not covered by insurance:]~~ that would have been covered by
831 qualified health insurance coverage.

832 (ii) An employer has an affirmative defense to a cause of action under Subsection
833 (7)(a) if the employer:

834 (A) relied in good faith on a written statement of actuarial equivalency provided by an
835 actuary; or

836 (B) if the department determines that compliance with this section is not required under
837 the provisions of Subsections (3) or (4).

838 (b) An employee has a private right of action only against the employee's employer to
839 enforce the provisions of this Subsection (7).

840 (8) Any penalties imposed and collected under this section shall be deposited into the
841 Medicaid Restricted Account created in Section 26-18-402.

842 (9) The failure of a contractor or subcontractor to provide qualified health insurance
843 coverage as required by this section:

844 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
845 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
846 Legal and Contractual Remedies; and

847 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
848 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
849 or construction.